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2 UNITED STATES BANKRUPTCY COURT
3 EASTERN DISTRICT OF CALIFORNIA
4 SACRAMENTO DIVISION
5

6 In re)
7) Case No. 17-23732-A-13J
8 GREGORY and CHRISTINE ALLEN,)
9) Docket Control Nos. LGB-1
10) AND JPJ-1
11)
12 Debtors.) Date: October 2, 2017
13) Time: 2:30 PM
14)
15 _____)

16
17 **MEMORANDUM**

18 In connection with their attempt to confirm a chapter 13
19 plan, the debtors, Gregory and Christine Allen, filed a motion to
20 avoid a judicial lien held by the respondent, the Estate of
21 Gisele Boulrice. That judicial lien encumbers the debtors' home
22 in rural Nevada County.

23 There is no dispute that the debtors are entitled to a
24 \$175,000 exemption in their home, that it is encumbered by an
25 unavoidable lien held by Quicken Home Loans in the amount of
26 \$200,806,¹ and that the respondent's lien is a judicial lien
27 securing a claim of \$86,529.28. The only disputed fact is the
28 value of the home. The debtors maintain that it is worth
\$375,000 while the respondent believes it is worth \$425,000.

If the debtors are correct, application of the formula in 11
U.S.C. § 522(f)(2)(A) will result in the avoidance of the

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27 _____
28 ¹The court takes judicial notice of Quicken Home Loan's
proof of claim filed on July 31, 2017.

1 respondent's lien. If the respondent is correct, its lien will
2 be partially avoided.

3 Section 522(f)(2)(A) provides that a judicial lien impairs
4 an exemption to the extent the sum of the judicial lien, the
5 unavoidable lien, and the debtors' exemption amount exceeds the
6 value of the property.

7	JUDICIAL LIEN	\$ 86,529.28
8	UNAVOIDABLE LIEN	\$200,806.00
9	EXEMPTION	<u>\$175,000.00</u>
10	TOTAL	\$462,335.28

11 Because \$462,335.28 exceeds the debtors' valuation of
12 \$375,000 by \$87,335.28, the entire judicial lien of \$86,529.28 is
13 avoidable.

14 However, at the respondent's valuation of \$425,000, only
15 \$37,335.28 impairs the debtors' exemption. A portion of the
16 judicial lien, \$49,194, will not be avoided.

17 On the issue of value, the court received the testimony of
18 two appraisers, Gia Grim for the debtors and Yan Feiler for the
19 respondent. In the court's view, there are two possible material
20 reasons for their differing valuations.

21 The debtors' home uses well water. Their well is not
22 adequate. In the best of times it produces around a gallon a
23 minute. At that rate, there is insufficient water for
24 landscaping and constant conservation by the homeowners is
25 necessary. In summer months, the well frequently goes dry
26 requiring potable water to be trucked to the property.

27 Paradoxically, the home is located very close to Rollins
28 Lake. Perhaps for that reason, there is hope that drilling a new

1 well or deepening the existing well will improve the home's water
2 supply. However, this will cost in the neighborhood of \$10,000
3 to \$21,000.

4 In arriving at her \$375,000 valuation, Ms. Grim adjusted her
5 comparable sales by \$20,000 to account for the debtors'
6 unreliable water supply.

7 Mr. Feiler, based on the estimates to deepen the well or
8 drill a new one, adjusted his opinion downward approximately
9 \$17,000 to account for the estimated cost of acquiring a reliable
10 water supply.

11 While each appraiser's approach to factoring the water
12 problem into their valuation may have been different, the result
13 is largely the same. This, then, does not explain their
14 different valuations.

15 The other material issue affecting value is the size of the
16 debtors' home. In Ms. Grim's appraisal, she reports the home's
17 total area as 1856 square feet. Mr. Feiler indicates that it is
18 2301 square feet, a difference of 448 square feet.

19 Ms. Grim excluded this 448 square feet because it is
20 comprised of three "unpermitted" additions to the house. She
21 considered this space bonus space and attributed only \$10,000 of
22 value to it.

23 Mr. Feiler, in addition to comparing the debtors' home to
24 other comparable properties, estimated value based on the cost to
25 replace the home. He estimated it would cost \$165.50 a square
26 foot to replace the dwelling space. This means it would cost
27 approximately \$74,000 to rebuild the 448 square feet. After
28 discounting the \$74,000 to account for physical and functional

1 depreciation of the home, this largely explains the \$50,000
2 difference in the valuations by Ms. Grim and Mr. Feiler.

3 Because the home as well as the unpermitted additions were
4 constructed by Mr. Allen, they are of the same quality. Given
5 this, and given that both appraisers acknowledged the likelihood
6 of having the additions inspected and retroactively permitted,
7 the court concludes that Ms. Grim's approach results in the home
8 being undervalued.

9 Also, Ms. Grim's estimate of the home's square footage at
10 1856 square feet meant that she selected smaller comparable
11 properties for comparison. This skewed her opinion downward.


12 Therefore, the court determines that the value of the
13 debtors' home is \$425,000 and that \$37,335.28 of the respondent's
14 judicial lien impairs the debtors' exemption and it is avoided to
15 that extent pursuant to 11 U.S.C. § 522(f)(1)(A).

16 Turning to the chapter 13 trustee's objection to the
17 confirmation of the plan, his objection will be sustained.
18 Because the respondent holds a partially secured claim, because
19 the plan permits the debtors to retain the property encumbered by
20 that claim, and because the plan does not provide for the payment
21 of that secured claim, the plan does not comply with 11 U.S.C. §
22 1325(a)(5)(B).

23 The chapter 13 trustee and the attorney for the respondent
24 shall lodge conforming orders.

25 Dated: October 03, 2017

By the Court

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Michael S. McManus
United States Bankruptcy Judge

**Instructions to Clerk of Court
Service List – Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC.

Gregory Douglas Allen
17920 Rollins View Drive
Grass Valley CA 95945

Christine Marie Allen
17920 Rollins View Drive
Grass Valley CA 95945

Jan P. Johnson
PO Box 1708
Sacramento CA 95812

Office of the U.S. Trustee
Robert T Matsui United States
Courthouse
501 I Street, Room 7-500
Sacramento CA 95814

Estate of Gisele Boulgerice

C. Kipp Wordell

Galen M. Gentry
520 9th Street, Suite 102
Sacramento CA 95814

Lucas B. Garcia
251 Auburn Ravine Rd #107
Auburn CA 95603

Wordell Law Group c o Gisele
Boulgerice
919 Reserve Drive Suite 105
Roseville CA 95678